

REMARKS

This paper is submitted in response to the final Office action mailed on September 29, 2009 (hereinafter "the Office action"). This paper presents arguments with respect to Yates and respectfully requests reconsideration. Accordingly, after entry of this Response, claims 1-3, 5-12, 14-27, 29-37, 39-42, 44-50, 52-56 and 58 will remain pending.

I. Yates Fails to Teach Profiling Virtually Addressable Memory Objects

The Office action maintains the rejection of claims 1-3, 5-12, 14-27, 29-37, 39-42, 44-50, 52-56 and 58 under 35 U.S.C. § 102(e) as allegedly anticipated by Yates. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). The Assignee respectfully traverses the §102 rejections because Yates simply does not teach each and every element as set forth in the claims. For example, the pending claims require profiling virtually addressable memory objects, and Yates not only fails to teach this claim element, Yates teaches to the contrary by teaching profiling physical memory objects rather than virtual memory objects.

In the past two communications from the Assignee, the Assignee has addressed the deficiencies of Yates and argued that the Patent Office's interpretation of Yates was in error. The Patent Office, however, has steadfastly refused to address the fact that Yates specifically teaches against profiling virtually addressable memory objects. Instead, the Office action cites to portions of Yates that teach profiling and other portions of Yates that teach virtual addressing, and then concludes that Yates teaches profiling virtually addressable memory objects. More specifically, the Office action cites to column 2, lines 25-25 [sic] and column 3, line 65 through column 4 line 1 for the proposition that the profiling tool disclosed in Yates determines at least one data address from one or more instruction instances as required by claim 1. *Office action at 2*. Then, the Office action cites to column 4, lines 45-55, column 22, lines 45-55, and column 69, lines 40-55 for the proposition that Yates teaches virtual address translation and concludes that "[i]t is clearly known that when a program is executed on a computer, the program refers to memory by virtual address." *Id. at 2-3*. When reading the passages cited by the Office action in isolation, one might erroneously think that the profiling mentioned in Yates, although not specifically taught as being performed on virtually addressable memory objects, can be performed on the virtual memory disclosed in Yates.

However, a full contextual read of Yates paints a different picture. The only fair teaching of profiling in Yates occurs in section V, titled "Profiling to Determine Hot Spots for Translation". Section V. of Yates begins by describing how the Tapestry system profiles non-native (i.e., X86 code): "profiler 400 monitors the execution of programs executing in X86 mode, and stores a stream of data representing the profile of the execution." *Col. 55, lines 7-10.* Then, Yates elaborates on the operation of the profiler 400 and specifically teaches against profiling virtually addressable memory locations: "profiler 400 tracks events by physical address, rather than by virtual address." *Col. 55, lines 47-48 (emphasis added).* Other portions of Yates also teach directly against the notion of profiling virtually addressable memory objects: "Tapestry and TAXi operate in terms of the physical memory of the virtual X86, not the X86 virtual or linear addresses." *Col. 29, lines 7-9 (emphasis added).* Thus, despite suggestions to the contrary, Yates does not teach or suggest profiling virtually addressable memory objects as required by the pending claims. For at least this reason, the Assignee respectfully submits that independent claims 1, 16, 33, 41, 47, and 55 (and their dependent claims) are not anticipated by Yates. Accordingly, the Assignee respectfully requests reconsideration of the §102 rejections and submits that these claims are allowable over the cited art.¹

III. Conclusion

The Assignee thanks the Examiner for his thorough review of the application. The Assignee respectfully submits the present application, as amended, is in condition for allowance and respectfully requests the issuance of a Notice of Allowability as soon as practicable.

The Assignee believes no fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this a request therefor and authorization to charge Deposit Account No. 04-1415 as necessary.

¹ Furthermore, since Yates teaches directly against the requirements of the claims, it is difficult to imagine how Yates could be combined with another reference, for example in a future obviousness rejection, to render the claims obvious.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney. context

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